

These terms and conditions of purchase are valid exclusively. Other (deviating, contrary or additional) terms and conditions of Supplier only apply if and insofar they are expressly confirmed in writing by Purchaser. This also applies if Purchaser does not contradict the other terms and conditions or accepts delivery without objection. These terms and conditions of purchase also apply to business transactions with Supplier in the future.

**1. Offer**

- a) In its offer, Supplier shall adhere exactly to the request of purchaser; Supplier shall indicate explicitly any deviations.
- b) Supplier's offers are considered to be binding. They must be complete and comprehensive.

**2. Order and Confirmation of Order**

- a) Only written orders are valid. Requests given in other form only become valid by written order. Supplier will issue an order confirmation without delay. Subsequent agreements only become valid if they are confirmed by Purchaser in writing.
- b) The execution of the order is regarded as an acceptance of these terms and conditions of purchase by Supplier.
- c) Supplier shall be responsible to Purchaser for the compliance of the contractual obligations when engaging subcontractors in the same manner as for its own breaches of the contract. Without prior written approval of Purchaser, Supplier may not perform its contractual obligations through third parties.
- d) If Supplier has not confirmed the order in writing within 14 days after its receipt, Purchaser has the right to revoke the order without any consequent obligation.

**3. Place and Time of Delivery**

- a) The place of delivery stated by Purchaser is the place of performance (*Bringschuld*). The risk of accidental loss or accidental deterioration of the goods passes to Purchaser with receipt of the goods at the place of performance. If and insofar acceptance is agreed, it determines the passing of the risk.
- b) The delivery date stated in the order is binding. Earlier delivery is only possible upon agreement. Receipt of the delivery or, in case acceptance is agreed or foreseen by the law, acceptance at the place of delivery stated by Purchaser is decisive for adherence to the delivery date.
- c) As soon as Supplier can anticipate a delay in delivery (either partial or full delivery), it will immediately inform Purchaser in writing, including the reasons for the delay and its presumable duration. The rights of Purchaser will not be affected thereby.
- d) If Supplier does not deliver at the agreed time, it is liable to purchaser according to the statutory provisions.
- e) In the case of a delay in delivery Purchaser is entitled to demand a penalty of 1% of the order value for each commenced week, but only up to a maximum of 5 % of the order value. All further statutory rights are reserved. Purchaser shall declare the reservation of the contractual penalty at the latest upon payment of the invoice which follows the delayed delivery.
- f) In the case of a delivery earlier than agreed Purchaser reserves its right to return the goods at Supplier's costs. If an earlier than agreed delivery is not returned, Purchaser will store the delivered goods at Supplier's risk and costs. In these cases the due date for payment remains unchanged.
- g) Partial deliveries are only accepted if agreed explicitly in writing. If such partial deliveries are agreed, the remaining quantity has to be listed in the delivery receipt.
- h) Supplier can only invoke the absence of documents to be provided by Purchaser, if it had sent a reminder in written form and then not received the documents without undue delay.

**4. Acceptance**

Delivery items which have to be installed at Purchaser's plant shall be accepted when installation has been carried out according to the contract and a test run has been completed successfully.

**5. Warranties and Liability**

- a) Supplier warrants that the delivery item has no defects impacting its value, its fitness for use, or any condition or quality of the delivery item agreed upon or guaranteed. A defect is also an inexpedient design in view of the accepted rules of technology. Purchaser's approval of Supplier's charts or calculations do not affect supplier's warranties or liability.

- b) Purchaser is also entitled to full warranty claims if, due to gross negligence, it did not have knowledge of the defect at the time the contract was entered into.

- c) Supplier's obligation to inspect incoming goods, if and insofar such is required by the applicable law, is limited to defects which become clearly evident under external inspection including the delivery documents or at statistical sampling (e.g. damage caused by transportation, incorrect or short delivery). The obligation of inspection for and notification of defects starts in all cases – even if the property title in the goods was transferred to Purchaser or the goods were handed to the shipper, freight carrier or other agent at an earlier point in time – only when the delivery item has been received at the place of delivery stated by Purchaser. In the case of hidden defects, the statutory period for notification of defects is extended by two further weeks as of discovery thereof.

- d) Supplier's liability for all defects and any other breach of contract is determined according to the statutory provisions. Irrespective of the statutory rights the purchaser, at its own choice, can also request removal of the defect or delivery of new goods free of defects. In the case of Supplier's delay in removal or replacement Purchaser is allowed – at Supplier's expense – to either remedy the defects itself or purchase goods from another supplier.

- e) The removal, disassembly and return of the rejected delivery items is effected at Supplier's risk and costs. Replacements shall be delivered and installed at Supplier's risk and costs to the designated place of use. For replaced or repaired delivery items the warranty period starts anew.

- f) Supplier warrants that no rights of third parties are violated by and in connection with its contractual performance. It shall indemnify Purchaser against any possible claim of third parties.

**6. Limitation Period**

Warranty claims shall be time-barred after three years from the receipt at the place of delivery specified by Purchaser or from acceptance on, unless a longer period is stipulated by law. The limitation period begins with the acceptance, if such is agreed or provided by the law. Otherwise, the statutory limitation periods apply.

**7. Accident Prevention**

Supplier undertakes to execute the order under observance of all applicable safety and accident prevention regulations and to also deliver all necessary safety devices. In addition, Supplier will observe all rules and instructions of Purchaser or the site-operator during delivery and installation. Supplier is obliged to inquire about the existence and content of such instructions in advance. Should necessary safety devices not be included in the total price, supplier will point this out specifically to Purchaser.

**8. Intellectual Property**

Irrespective of regulations no. 5 and 6 Supplier shall be liable for the infringement of patents, copyrights or trademark and other intellectual property rights of third parties in Germany or abroad by or in the connection with the delivery or its utilization.

**9. Product Liability and Safety Measures**

- a) Supplier will indemnify and hold Purchaser harmless from any third party product liability or product safety claim, if and insofar as the cause of damage is attributable to Supplier's sphere of responsibility and Supplier is liable towards the third party itself.
- b) Regarding such indemnity and liability, Supplier shall reimburse Purchaser's expenses incurred in connection with such claims as well as Purchaser's expenses appropriate in order to prevent damages in connection with a recall or other safety measure. Purchaser will inform Supplier to the extent possible and reasonable about type and scope of the recall or safety measure and will give Supplier the opportunity to comment thereon. All further statutory claims remain unaffected.

**10. Invoice and Payment**

- a) Invoices shall not be sent with the delivery item, but have to be sent separately and issued with order numbers by post or e-mail to the address stated in the order.
- b) Unless agreed otherwise, Purchaser shall pay within 30 days net after receipt of the correct and verifiable invoice and the delivery items.
- c) Supplier's receivables against Purchaser may only be assigned to third parties with Purchaser's written approval.
- d) Purchaser retains all statutory rights of retention or to set-off claims.



e) Due to organizational reasons payments of Purchaser are always effected without examination of Supplier's contractual performance. Payments cannot be regarded as acknowledgements of any kind and do not imply any declaration that the delivery items are in conformity with the contract.

**11. Documents**

a) Upon request, Supplier is obliged to provide Purchaser with plans, drawings, calculations etc. relating to the delivery item for inspection and approval and, after verification, to deliver these in the re-quested quantity. Upon request, Supplier shall further deliver to Purchaser the drawings for the essential spare parts with sufficient information to procure such spare parts. Purchaser shall make these documents accessible to third parties only insofar as it is necessary for replacements, rectifications, repair or resale of the delivery item.

b) Purchaser's documents, models, forms and tools – even if manufactured by Supplier for the account of Purchaser – become or re-main the exclusive property of Purchaser and, irrespective of a corresponding request by Purchaser, have to be returned to purchaser in working order, at the latest with the delivery of the remainder of goods. Purchaser retains all intellectual property rights regarding before-mentioned items. Any right of retention of supplier regarding these items is excluded. The items may not be made accessible to third parties, be used by Supplier for the purposes of third parties or own purposes, or be used for advertising purposes. Supplier shall keep and maintained the items with good care, so that they are in working order at all times. Third parties in the meaning of this paragraph are also companies distributing products of Purchaser.

c) These provisions also apply to products, models and documents, which have been produced in cooperation of Purchaser and Supplier or have been changed at the suggestion or by collaboration of Supplier.

d) Upon request, Supplier will provide Purchaser with certificates of origin, (long term) suppliers' declaration for products preferential origin status, and other documents regarding the requirements of foreign trade. Supplier will further inform Purchaser with regard to restrictions or authorization requirements for (re-)export.

**12. Consignment**

a) The delivery item has to be dispatched packaged and free of any charges to the place of delivery specified by Purchaser. Purchaser has to be informed of readiness for dispatch at least 5 working days prior to dispatch, and of dispatch without undue delay.

b) Supplier has to state the reference no., the order no. and the order date as well as place of delivery on the transport documents (consignment note, dispatch form, bill of lading etc.). The delivery address indicated by Purchaser has to be strictly observed.

c) In the case of individually packaged goods, express items and postal items as well as collective consignments, every item has to be tagged with labels or tickets on which the reference no., the or-der no. and the order date as well as the place of delivery are to be stated.

d) A delivery note indicating the order no. has to be attached to each consignment. Each order shall be handled separately in the transport documents.

e) If not expressly agreed otherwise, the officially determined weight is decisive for any calculation on a basis of weight or unit price. In this case tools and setting-up equipment shall not be loaded together with the delivery items; if this is not the case Supplier has to bear the costs for reloading. The weight indicated in the offer (quotation) has to be kept within a +/- 5% margin.

f) Delayed outstanding deliveries shall take place carriage free and exempt from charges for Purchaser. Additional freight costs which are incurred by using faster means of transportation in order to shorten the delay of Supplier shall entirely be borne by Supplier.

**13. Insurance**

a) The SLVS Indemnity- and Heavy Load Insurance have to be contracted by the carrier, respectively the crane company, at their expenses.

b) Supplier will conclude and maintain a general and product liability insurance with a coverage of at least 5 million Euros per personal injury / property damage.

**14. Packaging**

Supplier is responsible for proper packaging. Supplier will use box-protection when delivering goods in boxes. If worthwhile and not agreed otherwise, packaging material will be sent back carriage free in return for a reduction of 2/3 of the amount invoiced for the packaging.

**15. Compliance**

Supplier will comply with all applicable laws. It will adhere to the principles of the UN Global Compact and will request compliance of those from its contractors in an appropriate manner. Supplier will not tolerate any form of bribery or corruption. It will respect the prohibition of child and forced labor and protect the rights of its employees and of the environment. Should Supplier violate afore-said principles in a relevant manner and does not correct its behavior despite a corresponding request by Purchaser, Purchaser may terminate or rescind this Agreement and/or any order without further notice without prejudice to any other rights of Purchaser.

**16. Statutory Minimum Wages**

Supplier guarantees to comply with any applicable statutes or regulations regarding minimum wage in the countries in which its employees are working, if and insofar as these statutes or regulations are binding on Supplier. Supplier warrants that third parties used by him for the performance of the contract with Purchaser will also comply with such statutes or regulations. Upon request, Supplier will provide Purchaser with its documentation on the wages without undue delay. Supplier will indemnify Purchaser in the case of any infringement and will in particular hold Purchaser harmless from any claims or damages resulting from an infringement of such statutes or regulations by Supplier or a third party used by Supplier for the performance of the contract with Purchaser.

**17. Jurisdiction and Applicable Law**

The place of jurisdiction shall be Königstein im Taunus, Germany. Purchaser is entitled to choose the place of jurisdiction at the registered office of Supplier.

The substantive laws of the Federal Republic of Germany apply. The application of the Convention for the International Sales of Goods (CISG) is expressly excluded.

**18. Data protection**

a) Messer works with personal data provided by suppliers. Personal data are information which concern a living individual who can be identified with the data.

b) The personal data provided by suppliers is used:

- to deliver the agreed goods and to provide the agreed services,
- for invoicing, account maintenance, inventory management, telemetry, statistical assessment and for internal accounting
- to check creditworthiness and prevention of abuse.

c) Messer will transfer personal data for data processing facilities working for Messer, and to affiliated companies, or forwarded to licensed business information services or attorneys.

d) If in Messer's view it is required by law or is in the interest of public safety and order, or the supplier has consented to it, Messer will also provide personal data to government officials, public institutions or third parties.

e) Information to process the personal data of the supplier is found in Messer's data protection declaration, which can be provided to the supplier at any time upon request, and which can be downloaded from Messer's Internet site ([www.messer.de](http://www.messer.de)) at any time in its current version.

